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August 4, 2023

The Honorable Mary Kay Vyskocil
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Acuitas Therapeutics Inc. v. Genevant Sciences GmbH and Arbutus Biopharma Corp.*,
Case No. 22-cv-02229-MKV

Dear Judge Vyskocil:

I write on behalf of Plaintiff Acuitas Therapeutics Inc. to notify the Court that Acuitas has filed a notice of dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). (Neither Defendant has filed an answer or summary judgment motion.) Acuitas also filed a declaratory-judgment action against Genevant and Arbutus in the United States District Court for the District of New Jersey.

When Acuitas filed this action before Your Honor, it was the first case that addressed these issues. But after telling this Court that Acuitas's declaratory-judgment action was unnecessary and implying that they had no intention of suing Acuitas's customers Pfizer and BioNTech, Genevant and Arbutus then did precisely that—sued Pfizer and BioNTech on patents at issue in this case—but did so in the District of New Jersey.

Arbutus's and Genevant's August 1, 2023 letter to this Court omits that Acuitas asked whether they would consent to transfer this action to New Jersey, and that they refused to do so. But their letter elucidates some of the reasons why this case, too, should be heard in that District. They assert that the New Jersey court “is uniquely suited to resolve the controversy between Pfizer,” BioNTech, and the Defendants. They note that Pfizer and BioNTech did not move “to dismiss” their New Jersey action “on the basis that Acuitas is a necessary party” and assert that “[t]he closest Pfizer and BioNTech have come” to doing so “is an affirmative defense that states, in its entirety, ‘Plaintiffs’ Complaint improperly failed to name or join Acuitas Therapeutics, Inc.,’” but they omit that the cited defense is entitled, in all caps, “FAILURE TO JOIN A REQUIRED PARTY.” They also omit that Pfizer and BioNTech included an entire section in their New Jersey Answer and Counterclaims entitled “BIONTECH’S RELATIONSHIP WITH ACUITAS.”



Acuitas very much appreciates the Court's attention to this action. With Arbutus and Genevant having chosen to initiate a related lawsuit in New Jersey, however, and having refused to consent to transfer this case, it makes sense for Acuitas to withdraw this action and file in New Jersey as well.

Respectfully submitted,

/s/ Eric Alan Stone

Eric Alan Stone

CC: All Counsel via ECF